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23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA
25 WESTERN DIVISION

26 UNITED STATES OF AMERICA,

27 Plaintiff

28 v.

JOHN D. WILLIAMS, TRUSTEE of the
JULIA A. FISCHER LIVING TRUST,

Defendant.

CASE NO.

NOTICE OF LODGING OF
CONSENT DECREE

Plaintiff, the United States of America ("United States") hereby serves
notice that it is lodging with the Court a Consent Decree, attached hereto.

1 Under the terms of this Consent Decree, the United States will publish notice
 2 in the Federal Register and accept public comment on the proposed Consent
 3 Decree for a period of thirty (30) days. 28 C.F.R. § 50.7. Accordingly, Plaintiff
 4 respectfully requests that the Consent Decree not be entered prior to the expiration
 5 of the public comment period.
 6
 7


8 At the expiration of the public comment period and after Plaintiff has
 9 reviewed any public comments that are received, Plaintiff will either request that
 10 the Court enter the Consent Decree, or advise the Court that public comments have
 11 been received that warrant the Plaintiff's withdrawal from the Consent Decree.
 12
 13

14 Respectfully submitted,

15 FOR THE UNITED STATES

16 IGNACIA S. MORENO
 17 Assistant Attorney General
 18 Environment and Natural Resources Division
 19 United States Department of Justice

20 Date: 3/6/13

21 
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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 JOHN D. WILLIAMS, TRUSTEE of the
20 JULIA A. FISCHER LIVING TRUST,

21 Defendant.

Case No. **CV 13-01752**

CONSENT DECREE



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1 **I. BACKGROUND**

2 A. The United States of America ("United States"), on behalf of the
3 Administrator of the United States Environmental Protection Agency ("EPA") has
4 filed a complaint in this matter pursuant to Section 107 of the Comprehensive
5 Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §
6 9607, seeking reimbursement of response costs incurred and to be incurred for
7 response actions taken at or in connection with the release or threatened release of
8 hazardous substances at the Puente Valley Operable Unit ("PVOU") of the San
9 Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the "Site").

10 B. This Consent Decree provides for the reimbursement of a portion of the
11 United States' Past Response Costs at this Site by the Julia A. Fischer Living Trust
12 ("Fischer Trust" or "Settling Defendant").

13 C. By entering into this Consent Decree, Settling Defendant does not admit
14 liability to or arising out of the transactions or occurrences alleged in the Complaint or
15 to any other person related to the Site.

16 D. The United States and Settling Defendant agree, and this Court by
17 entering this Consent Decree finds, that this Consent Decree has been negotiated by
18 the Parties in good faith, that settlement of this matter will avoid prolonged and
19 complicated litigation between the Parties, and that this Consent Decree is fair,
20 reasonable, and in the public interest.

21 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
22 ADJUDGED, AND DECREED:

23 **II. JURISDICTION**

24 1. This Court has jurisdiction over the subject matter of this action pursuant
25 to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 9607, and 9613(b), and also has personal
26 jurisdiction over Settling Defendant in this action. Settling Defendant consents to and
27 shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter
28 and enforce this Consent Decree.

1 **III. PARTIES BOUND**

2 2. This Consent Decree is binding upon the United States, and upon Settling
3 Defendant and its beneficiaries, heirs, successors, and assigns. Any change in
4 ownership or corporate or other legal status, including but not limited to, any transfer
5 of assets or real or personal property, shall in no way alter the status or responsibilities
6 of Settling Defendant under this Consent Decree.

7 **IV. DEFINITIONS**

8 3. Unless otherwise expressly provided herein, terms used in this Consent
9 Decree which are defined in CERCLA or in regulations promulgated under CERCLA
10 shall have the meaning assigned to them in CERCLA or in such regulations.
11 Whenever the terms listed below are used in this Consent Decree, the following
12 definitions shall apply:

13 a. "Basin-wide Response Costs" shall mean costs, including but not
14 limited to direct and indirect costs, including accrued Interest, that the United States
15 has paid for basin-wide (non-operable unit) response actions in connection with the
16 San Gabriel Valley Superfund Sites, Areas 1- 4.

17 b. "Carrier Consent Decree" shall mean the consent decree entered on
18 April 28, 2006 in the matter of United States v. Carrier Corporation, Civ. Action No.
19 05-6022 ABC (FMOx)(C.D. Cal.), relevant portions of which are attached hereto as
20 Appendix A.

21 c. "CERCLA" shall mean the Comprehensive Environmental
22 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et
23 seq.

24 d. "Consent Decree" shall mean this Consent Decree and Appendix
25 A attached hereto.

26 e. "Day" shall mean a calendar day. In computing any period of time
27 under this Consent Decree, where the last day falls on a Saturday, Sunday, or federal
28 holiday, the period shall run until the close of business of the next working day.

1 f. "DOJ" shall mean the United States Department of Justice and any
2 successor departments, agencies, or instrumentalities of the United States.

3 g. "Effective Date" shall mean the date of entry of this Consent
4 Decree.

5 h. "EPA" shall mean the United States Environmental Protection
6 Agency and any successor departments, agencies, or instrumentalities of the United
7 States.

8 i. "EPA Hazardous Substance Superfund" shall mean the Hazardous
9 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

10 j. "ESD" shall mean the Explanation of Significant Differences
11 issued by EPA on June 14, 2005 for the Record of Decision.

12 k. "Facility" shall mean the Site.

13 l. "Future Response Costs" shall mean all costs, including but not
14 limited to Oversight Costs, direct or indirect costs, and Basin-wide Response Costs
15 allocated to the Site, including Interest, that the United States or any third party pays
16 or incurs at or relating to the Site after the date of entry of this Consent Decree, but
17 prior to the later of (i) the date 8 years from the Operational and Functional Date of
18 the Carrier Consent Decree, or (ii) the date of issuance of a final Record of Decision
19 for the Site.

20 m. "Interest" shall mean interest at the applicable rate specified for
21 interest on investments of the Hazardous Substance Superfund established by 26
22 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with
23 42 U.S.C. § 9607(a).

24 n. "Oversight Costs" shall mean all direct and indirect costs,
25 including Interest, that the United States incurs in connection with monitoring and
26 supervising performance of the Response Work by other persons.

27 o. "Paragraph" shall mean a portion of this Consent Decree identified
28 by an Arabic numeral or an upper or lower case letter.

1 p. "Parties" shall mean the United States and the Settling Defendant.

2 q. "Past Response Costs" shall mean all costs, including but not
3 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response Costs
4 allocated to the Site, including Interest, that the United States or any third party has
5 paid or incurred at or relating to the Site through and including the date of entry of this
6 Consent Decree.

7 r. "Plaintiff" shall mean the United States.

8 s. "Record of Decision" or "ROD" shall mean the September 30,
9 1998 EPA Interim Record of Decision for the Puente Valley Operable Unit (Area 4)
10 of the San Gabriel Valley Superfund Sites, Areas 1-4.

11 t. "Response Work" shall mean the design and implementation of
12 any remedial measures, including the operation and maintenance thereof,
13 encompassed within the Record of Decision as modified by the ESD.

14 u. "Section" shall mean a portion of this Consent Decree identified by
15 a Roman numeral.

16 v. "Settling Defendant" shall mean Fischer Trust and its respective
17 predecessors in interest, trustees, beneficiaries, fiduciaries, heirs, successors, and
18 assigns but only to the extent that such predecessors in interest, trustees, beneficiaries,
19 fiduciaries, heirs, successors, and assigns have no independent liability for the Site
20 other than liability derived from that entity's relationship to or affiliation with the
21 Settling Defendant.

22 w. "Site" shall mean the facility, which consists of an area of
23 groundwater contamination in Los Angeles County, California, located in the
24 geographic area designated on the National Priorities List as the San Gabriel Valley
25 Superfund Site, Area 4 and identified as the Puente Valley Operable Unit. See 49
26 Fed. Reg. 19480 (1984).

27 x. "State" shall mean the State of California.

28 y. "United States" shall mean the United States of America, including

1 its departments, agencies and instrumentalities.

2 **V. STATEMENT OF PURPOSE**

3 4. By entering into this Consent Decree, the mutual objective of the Parties
4 is for Settling Defendant to make a cash payment to address its liability for the Site as
5 provided in the Covenant Not to Sue by Plaintiff in Section VII, and subject to the
6 Reservations of Rights by United States in Section VIII, paragraph 15.

7 **VI. REIMBURSEMENT OF RESPONSE COSTS**

8 5. Payments to the EPA Hazardous Substance Superfund. Settling
9 Defendant shall pay to the EPA Hazardous Substance Superfund the amount of Four
10 Hundred Ten Thousand Dollars (\$410,000) in reimbursement of Past Response Costs.
11 Payment shall be made as follows:

12 a. Settling Defendant shall, within thirty (30) working Days after
13 entry of this Consent Decree, remit the principal of four hundred ten thousand dollars
14 (\$410,000) to the United States. Payment to the United States shall be made by
15 FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in
16 accordance with current EFT procedures, referencing the USAO File Number, EPA
17 Region IX, the Site/Spill ID Number 09-8V, and DOJ Case Number 90-11-2-354/31.
18 Payment shall be made in accordance with instructions provided to the Settling
19 Defendant by the Financial Litigation Unit of the United States Attorney's Office for
20 the Central District of California following lodging of the Consent Decree. Any
21 payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be
22 credited on the next business Day. Settling Defendant shall send notice to the EPA
23 and the DOJ that payment has been made in accordance with Section XIV (Notices
24 and Submissions) and to David Wood, MTS-4-2, Supervisory Accountant, U.S. EPA,
25 Region IX, 75 Hawthorne Street, San Francisco, California 94105.

26 b. The four hundred ten thousand dollars (\$410,000) paid by Settling
27 Defendant to the United States shall be deposited in the "San Gabriel Valley
28 Superfund Sites, Area 4, Special Account" within the EPA Hazardous Substance

1 Superfund. This Special Account shall be retained and used to conduct or finance
 2 response actions at or in connection with the Site or the San Gabriel Valley Superfund
 3 Sites (Areas 1- 4), or may be transferred by the EPA from this Special Account to the
 4 EPA Hazardous Substance Superfund.

5 **VII. FAILURE TO COMPLY WITH REQUIREMENTS**

6 6. Interest on Late Payments. In the event that any payment required under
 7 Section VI (Reimbursement of Response Costs) or Section VII, Paragraph 7
 8 (Stipulated Penalties) is not received when due, Interest shall continue to accrue on the
 9 unpaid balance through the date of payment. Settling Defendant shall be liable for any
 10 such Interest pertaining to the payments required under Section V, paragraphs 5.a.
 11 (Reimbursement of Response Costs).

12 7. Stipulated Penalties.

13 a. Settling Defendant shall be liable for stipulated penalties for late
 14 payments under Section VI, paragraphs 5.a. (Reimbursement of Response Costs) and
 15 for the Interest on late payments under Section VI, paragraphs 5.a. as required under
 16 Section VII, Paragraph 6. The stipulated penalties shall be in the following amounts
 17 per violation per Day that any such payment is late:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1500	15th through 30th Day
\$2500	31st Day and beyond

22 b. Settling Defendant shall be liable for stipulated penalties in the
 23 amount of \$1500 per Day per violation of the provisions contained in Sections XII
 24 (Access To Information), and XIII (Retention of Records).

25 8. All Interest and penalties set forth under this Section shall begin to accrue
 26 on the Day a violation occurs, and shall continue to accrue through the final Day of
 27 the correction of the noncompliance. Nothing herein shall prevent the simultaneous
 28 accrual of separate penalties for separate violations of this Consent Decree.

1 9. Interest and stipulated penalties shall accrue as provided in Paragraphs 6
2 and 7, regardless of whether EPA has notified Settling Defendant of the violation or
3 made a demand for payment, but need be paid only upon demand.

4 10. Interest and stipulated penalties set forth under this Section shall be due
5 and payable within 30 Days of the date of demand for payment. All payments to the
6 United States under this Paragraph shall be made by certified or cashier's check made
7 payable to the "EPA Hazardous Substances Superfund," shall be forwarded to the U.S.
8 EPA, Region IX, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076,
9 St. Louis, MO 63197-9000, shall indicate that payment is for Interest and/or stipulated
10 penalties, and shall reference EPA Region IX, the Site/Spill Identification Numbers
11 09-8V, the USAO File Number, the DOJ Case Number 90-11-2-354/31, and the name
12 and address of the party making payment. Copies of check(s) paid pursuant to this
13 Paragraph, and any accompanying transmittal letter(s), shall be forwarded to the DOJ
14 and the EPA as provided in Section XIV (Notices and Submissions), and to David
15 Wood, MTS-4-2, Supervisory Accountant, U.S. EPA Region IX, 75 Hawthorne
16 Street, San Francisco, California 94105.

17 11. Notwithstanding any other provision of this Section, the United States
18 may, in its unreviewable discretion, waive any portion of Interest or stipulated
19 penalties that have accrued pursuant to this Consent Decree.

20 12. Payments made under this Section shall be in addition to any other
21 remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to
22 comply with the requirements of this Consent Decree.

23 13. If the United States brings an action against Settling Defendant to enforce
24 this Consent Decree, Settling Defendant shall reimburse the United States for all costs
25 of such action, including but not limited to costs of attorney time.

26 **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

27 14. Covenant Not to Sue. Except as specifically provided in Paragraph 15
28 (Reservation of Rights), Plaintiff covenants not to sue or to take any administrative

1 action against Settling Defendant for performance of Response Work, Past Response
 2 Costs and Future Response Costs, pursuant to Section 7003 of RCRA, 42 U.S.C. §
 3 6973, or Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a). This
 4 covenant shall take effect upon receipt by Plaintiff of the payments set forth in
 5 Paragraph 5. This covenant is conditioned upon Settling Defendant's satisfactory
 6 performance of its obligations under this Consent Decree. This covenant extends only
 7 to Settling Defendant and does not extend to any other person.

8 15. Reservation of Rights. The covenant not to sue set forth in Paragraph 14
 9 does not pertain to any matters other than those expressly specified therein. The
 10 Plaintiff reserves, and this Consent Decree is without prejudice to all rights against
 11 Settling Defendant with respect to other matters, including but not limited to:

- 12 a. liability for failure by Settling Defendant to meet a requirement of
 13 this Consent Decree;
- 14 b. liability for damages for injury to, destruction of, or loss of natural
 15 resources, and for the costs of any natural resource damage assessments;
- 16 c. criminal liability; and
- 17 d. liability for response actions and response costs incurred or to be
 18 incurred by the United States not covered as matters addressed as set forth in
 19 Paragraph 21 of this Consent Decree, including but not limited to liability for any
 20 response actions and response costs at the Site that occur after the later of (i) the date
 21 8 years from the Operational and Functional Date of the Carrier Consent Decree, or
 22 (ii) the date of issuance of a final Record of Decision for the Site.

23 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

24 16. Settling Defendant covenants not to sue and agrees not to assert any
 25 claims or causes of action against Plaintiff or its contractors or employees with respect
 26 to Response Work, Past Response Costs and Future Response Costs, as set forth in
 27 this Consent Decree, including but not limited to:

- 28 a. any direct or indirect claims for reimbursement from the

1 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of
2 CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision
3 of law;

4 b. any claims arising out of costs or response actions at or in
5 connection with the Site, including any claim under the United States Constitution, the
6 California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice
7 Act, 28 U.S.C. § 2412, as amended, or at common law; and

8 c. any claims against the United States pursuant to Sections 107 and
9 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

10 17. Nothing in this Consent Decree shall be deemed to constitute approval or
11 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
12 § 9611, or 40 C.F.R. § 300.700(d).

13 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

14 18. Nothing in this Consent Decree shall be construed to create any rights in,
15 or grant any cause of action to, any person not a Party to this Consent Decree. The
16 preceding sentence shall not be construed to waive or nullify any rights that any
17 person not a signatory to this Decree may have under applicable law. Each of the
18 Parties expressly reserves any and all rights (including, but not limited to, any right to
19 contribution), defenses, claims, demands, and causes of action which each Party may
20 have with respect to any matter, transaction, or occurrence relating in any way to the
21 Site against any person not a Party hereto.

22 19. The Parties agree that in consideration of the payment made by Settling
23 Defendant and the execution of this Consent Decree, Settling Defendant has resolved
24 its liability to Plaintiff and is entitled to protection from contribution actions or claims
25 as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters
26 addressed in this Consent Decree, conditioned only upon entry of this Consent Decree.
27 The matters addressed in this Consent Decree are: Response Work; Past Response
28 Costs; and Future Response Costs. The matters addressed exclude those response

1 actions and response costs to which Plaintiff has reserved its rights under this Consent
2 Decree.

3 20. Settling Defendant agrees that, with respect to any suit or claim for
4 contribution brought by Settling Defendant for matters related to this Consent Decree,
5 Settling Defendant will notify the DOJ and the EPA, in writing not later than sixty
6 (60) Days prior to the initiation of such suit or claim. Settling Defendant also agrees
7 that, with respect to any suit or claim for contribution brought against Settling
8 Defendant for matters related to this Consent Decree, Settling Defendant will notify
9 the DOJ and EPA in writing within ten (10) Days of service of the complaint or
10 claims upon Settling Defendant. In addition, Settling Defendant shall notify the DOJ
11 and EPA within ten (10) Days of service or receipt of any motion for summary
12 judgment or any order from a court setting a case for trial, for matters related to this
13 Consent Decree.

14 21. In any subsequent administrative or judicial proceeding initiated by the
15 United States for injunctive relief, recovery of response costs, or other relief relating
16 to the Site, Settling Defendant shall not assert, and may not maintain, any defense or
17 claims based upon the principles of waiver, res judicata, collateral estoppel, issue
18 preclusion, claim-splitting, or other defenses based upon any contention that the
19 claims raised by the United States in the subsequent proceeding were or should have
20 been brought in the instant case; provided, however, that nothing in this Paragraph
21 affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section
22 VIII.

23 **XI. SITE ACCESS**

24 22. Commencing upon the date of lodging of this Consent Decree, Settling
25 Defendant agrees to provide the United States and the State of California and their
26 representatives, including the EPA, the Department of Toxic Substances Control, and
27 the Los Angeles Regional Water Quality Control Board, and their contractors, access
28 at all reasonable times to the property within the Site owned or controlled by Settling

1 Defendant to which access is determined by the EPA to be required for the
 2 implementation of this Consent Decree, or for the purpose of conducting any response
 3 activity related to the Site, including but not limited to:

4 a. Monitoring of investigation, removal, remedial or other activities
 5 at the Site;

6 b. Verifying any data or information submitted to the United States or
 7 to the State of California;

8 c. Conducting investigations relating to contamination at or near the
 9 Site;

10 d. Obtaining samples;

11 e. Assessing the need for, planning, or implementing response actions
 12 at or near the Site; and

13 f. Inspecting and copying records, operating logs, contracts, or other
 14 documents maintained or generated by Settling Defendant or its agents, consistent
 15 with Section XII (Access to Information).

16 23. Notwithstanding any provision of this Consent Decree, the United States
 17 retains all of its access authorities and rights, including enforcement authorities related
 18 thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. §
 19 6927, and any other applicable statutes or regulations.

20 **XII. ACCESS TO INFORMATION**

21 24. Settling Defendant shall provide to Plaintiff, upon request, copies of all
 22 documents and information within its possession or control or that of its contractors or
 23 agents relating in any manner to response actions taken at the Site or the liability of
 24 any person for response actions conducted and to be conducted at the Site, including,
 25 but not limited to, sampling, analysis, chain of custody records, manifests, trucking
 26 logs, receipts, reports, sample traffic routing, correspondence, or other documents or
 27 information related to the Site.

28 25. Confidential Business Information and Privileged Documents.

1 a. Settling Defendant may assert business confidentiality claims
2 covering part or all of the documents or information submitted to Plaintiff under this
3 Consent Decree to the extent permitted by and in accordance with Section 104(e)(7)
4 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or
5 information determined to be confidential by Plaintiff will be accorded the protection
6 specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies
7 documents or information when they are submitted to the Plaintiff, or if Plaintiff has
8 notified Settling Defendant that the documents or information are not confidential
9 under the standards of Section 104(e)(7) of CERCLA, the public may be given access
10 to such documents or information without further notice to Settling Defendant.

11 b. Settling Defendant may assert that certain documents, records or
12 other information are privileged under the attorney-client privilege or any other
13 privilege recognized by federal law. If Settling Defendant asserts such a privilege in
14 lieu of providing documents, it shall provide Plaintiff with the following: 1) the title of
15 the document, record, or information; 2) the date of the document, record, or
16 information; 3) the name and title of the author of the document, record, or
17 information; 4) the name and title of each addressee and recipient; 5) a description of
18 the subject of the document, record or information; and 6) the privilege asserted.
19 However, no documents, reports, or other information created or generated pursuant to
20 the requirements of this or any other consent decree with Plaintiff shall be withheld on
21 the grounds that they are privileged. If a claim of privilege applies only to a portion of
22 a document, the document shall be provided to Plaintiff in redacted form to mask the
23 privileged information only. Settling Defendant shall retain all records and documents
24 that it claims to be privileged until Plaintiff has had a reasonable opportunity to
25 dispute the privilege claim and any such dispute has been resolved in the Settling
26 Defendant's favor.

27 26. No claim of confidentiality shall be made with respect to any data,
28 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,

1 scientific, chemical, or engineering data, or any other documents or information
2 evidencing conditions at or around the Site.

3 **XIII. RETENTION OF RECORDS**

4 27. Until ten (10) years after the entry of this Consent Decree, Settling
5 Defendant shall preserve and retain all records and documents now in its possession
6 or control, or which come into its possession or control thereafter, that relate in any
7 manner to response actions taken at the Site or the liability of any person for response
8 actions conducted and to be conducted at the Site, regardless of any corporate
9 retention policy to the contrary. After five (5) years, Settling Defendant may contact
10 the EPA in writing to request instructions as to whether such records and documents
11 shall be maintained for the remaining five (5) year retention period, or whether such
12 records and documents may be discarded. No retained records or documents shall be
13 disposed of prior to the ten (10) year retention period, unless Settling Defendant
14 receives instructions from the EPA specifically permitting Settling Defendant to
15 dispose of such records and documents.

16 28. After the conclusion of the ten (10) year document retention period in the
17 preceding Paragraph, Settling Defendant shall notify the EPA and the DOJ at least
18 ninety (90) Days prior to the destruction of any such records or documents, and, upon
19 request by the EPA or the DOJ, Settling Defendant shall deliver any such records or
20 documents to EPA subject to the same privilege provisions set forth in Section XII
21 (Access To Information).

22 29. By signing this Consent Decree, Settling Defendant certifies that, after
23 thorough inquiry, to the best of its knowledge and belief, Settling Defendant has not
24 altered, mutilated, discarded, destroyed, or otherwise disposed of any records,
25 documents, or other information relating to its potential liability regarding the Site,
26 after notification of potential liability or the filing of a suit against Settling Defendant
27 regarding the Site; and that Settling Defendant has fully complied with any and all
28 EPA requests for information regarding the Site pursuant to Sections 104(e) and

1 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA,
2 42 U.S.C. § 6927.

3 **XIV. NOTICES AND SUBMISSIONS**

4 30. Whenever, under the terms of this Consent Decree, notice is required to
5 be given or a document is required to be forwarded by one party to another, it shall be
6 directed to the individuals at the addresses specified below, unless those individuals or
7 their successors give notice of a change to the other Parties in writing. Written notice
8 as specified herein shall constitute complete satisfaction of any written notice
9 requirement of the Consent Decree with respect to the United States (the DOJ and the
10 EPA) and Settling Defendant, respectively.

11 As to the United States:

12 As to DOJ:

13 W. Benjamin Fisherow
14 Acting Chief, Environmental Enforcement Section
15 Environment and Natural Resources Division
16 U.S. Department of Justice (DJ # 90-11-2-354/31)
P.O.Box 7611
Washington, D.C. 20044-7611

17 Elise S. Feldman
18 Trial Attorney
19 Environmental Enforcement Section
20 Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

21 As to EPA:

22 Larry Bradfish(ORC-3) .
23 Assistant Regional Counsel
24 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

25 As to Settling Defendant:

26 Peter A. Nyquist
27 Alston + Bird, LLP
28 333 South Hope Street, 16th Floor
Los Angeles, CA 90071
Tel: (213) 576-1142

1 Fax: (213) 576-1100
2 Email: pete.nyquist@alston.com

3 Settling Defendant may change the identity or contact information for its agent
4 at any time by written notice to the Court and to the United States.

5 **XV. RETENTION OF JURISDICTION**

6 31. This Court shall retain jurisdiction over this matter for the purpose of
7 interpreting and enforcing the terms of this Consent Decree.

8 **XVI. INTEGRATION/APPENDICES**

9 32. This Consent Decree and its appendix constitute the final, complete and
10 exclusive agreement and understanding among the Parties with respect to the
11 settlement embodied in this Consent Decree. The Parties acknowledge that there are
12 no representations, agreements or understandings relating to the settlement other than
13 those expressly contained in this Consent Decree. The following appendix is attached
14 to and incorporated into this Consent Decree: "Appendix A" is the relevant portions of
15 the Carrier Consent Decree.

16 **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

17 33. This Consent Decree shall be lodged with the Court for a period of not
18 less than thirty (30) Days for public notice and comment. The United States reserves
19 the right to withdraw or withhold its consent if the comments regarding the Consent
20 Decree disclose facts or considerations which indicate that this Consent Decree is
21 inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this
22 Consent Decree without further notice.

23 34. If for any reason this Court should decline to approve this Consent
24 Decree in the form presented, this agreement is voidable at the sole discretion of any
25 party and the terms of the agreement may not be used as evidence in any litigation
26 between the Parties.

27 **XVIII. EFFECTIVE DATE**

28 35. The effective date of this Consent Decree shall be the date upon which it
is entered by the Court.

1 ///

2 **XIX. SIGNATORIES/SERVICE**

3 36. Each undersigned representative of the Settling Defendant and the
4 Assistant Attorney General for the Environment and Natural Resources Division of
5 the United States Department of Justice, certifies that he or she is authorized to enter
6 into the terms and conditions of this Consent Decree and to execute and bind legally
7 such Party to this document.

8 37. Settling Defendant hereby agrees not to oppose entry of this Consent
9 Decree by this Court or to challenge any provision of this Consent Decree, unless the
10 United States has notified Settling Defendant in writing that it no longer supports
11 entry of the Consent Decree.

12 38. Settling Defendant shall identify, on the attached signature page, the
13 name and address of an agent who is authorized to accept service of process by mail
14 on behalf of that Party with respect to all matters arising under or relating to this
15 Consent Decree. Settling Defendant hereby agrees to accept service in that manner
16 and to waive the formal service requirements set forth in Rule 4 of the Federal Rules
17 of Civil Procedure and any applicable local rules of this Court, including, but not
18 limited to, service of a summons.

19 **XX. FINAL JUDGMENT**

20 39. Upon approval and entry of this Consent Decree by this Court, this
21 Consent Decree shall constitute a final judgment between and between the United
22 States and Settling Defendant. The Court finds that there is no just reason for delay
23 and therefore enters this judgment as the final judgment under Fed. R. Civ. P. 54 and
24 58.

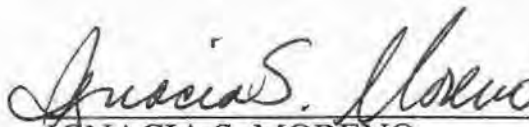
25 SO ORDERED THIS _____ DAY OF _____, _____.

26
27
28
Honorable _____
United States District Judge

1
2 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to the
3 San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente Valley
4 Operable Unit.

5 DATED: 1/31/13

FOR THE UNITED STATES OF AMERICA

7
8 


9 IGNACIA S. MORENO
10 Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

11 DATED: 3/4/13

13
14 

15 ELISE FELDMAN
16 Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

17
18 DATED:

19
20
21 
22 JANE DIAMOND
23 Director
Superfund Division
U.S. Environment Protection Agency Region 9

24 DATED:

25
26
27 
28 LARRY BRADFISH
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environment Protection Agency Region 9

FOR THE UNITED STATES OF AMERICA
U.S. ENVIRONMENTAL PROTECTION AGENCY

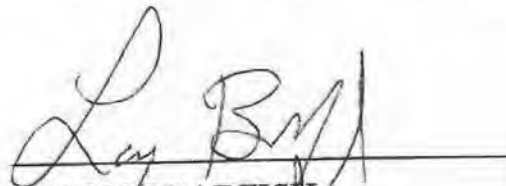
DATED:

12/13/2012



JANE DIAMOND
Director
Superfund Division
U.S. Environment Protection Agency Region 9

DATED:



LARRY BRADFISH
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environment Protection Agency Region 9

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to the
2 San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente Valley
3 Operable Unit.

4
5 DATED:

6 9/17/12

FOR JULIA A. FISCHER LIVING TRUST

7 

8 John Williams
Trustee, Fischer Trust

9
10 Agent authorized to receive service of process pursuant to Paragraph 38:

11
12 Peter A. Nyquist
13 Alston + Bird, LLP
333 South Hope Street, 16th Floor
14 Los Angeles, CA 90071
Tel: (213) 576-1142
15 Fax: (213) 576-1100
Email: pete.nyquist@alston.com
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APPENDIX A
RELEVANT PORTIONS OF THE CARRIER CONSENT DECREE

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Case 2:05-cv-06022-FMO Document 29 Filed 04/25/2006 Page 1 of 328

ORIGINAL

1 SUE ELLEN WOOLDRIDGE
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice

3 MATTHEW A. FOGELSON
4 Environmental Enforcement Section
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7 Facsimile: (415) 744-6476
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8 ELIZABETH F. KROOP
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Environment & Natural Resources Division
10 United States Department of Justice
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11 Ben Franklin Station
Washington, DC 20044
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Facsimile: (202) 514-2583
13 E-mail: Elizabeth.Kroop@usdoj.gov

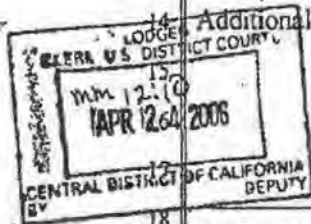
14 Additional Counsel Listed on Next Page

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

18 UNITED STATES OF AMERICA,
19 Plaintiff,
20
21 v.
22 CARRIER CORPORATION,
23 Defendant.

Case No. CV-05-6022 ABC (FMOx)

AMENDED CONSENT DECREE



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1 direct and indirect costs, including accrued Interest, that the United States has
2 incurred or in the future incurs for basin-wide (non-operable unit) response actions
3 in connection with the San Gabriel Valley Superfund Sites, Areas 1 - 4.

4 "CERCLA" shall mean the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
6 "Consent Decree" shall mean this Decree and all appendices attached hereto (listed
7 in Section XXX). In the event of conflict between this Decree and any appendix,
8 this Decree shall control.

9 "Day" shall mean a calendar day unless expressly stated to be a working
10 day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal
11 holiday. In computing any period of time under this Consent Decree, where the
12 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
13 until the close of business of the next working day.

14 "DOJ" shall mean the United States Department of Justice and any of its
15 successor departments, agencies, or instrumentalities.

16 "DTSC" shall mean the California Department of Toxic Substances Control
17 and any successor departments or agencies.

18 "Effective Date" shall be the effective date of this Consent Decree as
19 provided in Paragraph 117.

20 "Eligible SEP Costs" shall include the costs of implementing the
21 Supplemental Environmental Project (SEP) required pursuant to Section XVIII,
22 but do not include Settling Defendants' overhead, administrative expenses or legal
23 fees. Contractor oversight costs not exceeding 5% of \$468,750 may be included as
24 Eligible SEP Costs, so long as adequate documentation is provided.

25 "EPA" shall mean the United States Environmental Protection Agency and
26 any of its successor departments or agencies.

27 "Explanation of Significant Differences" or "ESD" shall mean the
28 Explanation of Significant differences relating to the Site issued by EPA on June

1 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

2 "Future Response Costs" shall mean all costs that are incurred by the United
3 States or any third party for response actions with respect to the Site after the
4 Effective Date, but prior to the later of (i) the date 8 years from the Operational and
5 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
6 Site. Future Response Costs include, but are not limited to, Basin-wide Response
7 Costs allocated to the Site, direct and indirect costs and accrued interest that the
8 United States incurs in reviewing or developing plans, reports, and other items
9 pursuant to this Consent Decree, verifying the Work, or otherwise implementing,
10 overseeing, or enforcing this Consent Decree, including but not limited to payroll
11 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to
12 Sections VII (Remedy Review), IX (Access and Institutional Controls; including
13 but not limited to the cost of attorney time and any monies paid to secure access or
14 to secure or implement institutional controls including but not limited to the
15 amount of just compensation), XV (Emergency Response), and Paragraph 99 of
16 Section XXII (Work Takeover).

17 "Interest," shall mean interest at the rate specified for interest on investments
18 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
19 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
20 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
21 interest accrues. The rate of interest is subject to change on October 1 of each
22 year.

23 "Interim ROD" shall mean the Interim Record of Decision relating to the
24 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on
25 September, 30 1998 by the Regional Administrator, EPA Region 9, or his/her
26 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A
27 to this Consent Decree.

28 "Mid-Valley Monitoring" shall mean the installation and monitoring of

1 wells in the intermediate and deep groundwater zones in the mid-valley area of the
2 Site to monitor vertical and horizontal contaminant migration in such groundwater
3 zones, as set forth in the SOW. For purposes of this Consent Decree, the mid-
4 valley shall extend from Azusa Avenue to Puente Creek.

5 "National Contingency Plan" or "NCP" shall mean the National Oil and
6 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
7 Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300,
8 and any amendments thereto.

9 "Operational and Functional" shall mean that the Remedial Action, or a
10 phase thereof, has been constructed and that it is performing in accordance with the
11 applicable SOW and the applicable final Remedial Design/ Remedial Action Work
12 Plans and other plans approved by EPA.

13 "Operational and Functional Date" shall mean the date that all phases of the
14 Remedial Action are Operational and Functional pursuant to Paragraph 50.

15 "Paragraph" shall mean a portion of this Consent Decree identified by an
16 Arabic numeral or an upper case letter.

17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including but not limited to
19 Basin-wide Response Costs allocated to the Site, direct and indirect costs,
20 including Interest, that the United States or any third party has paid or incurred at
21 or in connection with the Site, through and including the Effective Date.

22 "Performance Criteria" shall mean the prevention of groundwater in the
23 shallow zone north of Puente Creek at the mouth of Puente Valley with
24 contamination greater than or equal to ten-times the levels listed in Table 2 of the
25 ESD from:

26 (1) migrating beyond its lateral extent as measured at the time the
27 shallow zone Remedial Action containment system is Operational and
28 Functional; and

1 (2) migrating vertically into the intermediate zone;
2 for a period of 8 years from the Operational and Functional Date.

3 "Plaintiff" shall mean the United States.

4 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
5 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

6 "Remedial Action" shall mean those activities to be undertaken by Settling
7 Defendants to implement the shallow zone remedy north of Puente Creek and Mid-
8 Valley Monitoring, in accordance with the Interim ROD as modified by the ESD,
9 the applicable SOW, and the applicable Remedial Design/ Remedial Action Work
10 Plans and other plans approved by EPA.

11 "Remedial Action Work Plan" shall mean the document developed pursuant
12 to Paragraph 11 of this Consent Decree and approved by EPA, and any
13 amendments thereto.

14 "Remedial Design" shall mean those activities to be undertaken by Settling
15 Defendants to develop the final plans and specifications for the Remedial Action
16 pursuant to the Remedial Design Work Plan.

17 "Remedial Design Work Plan" shall mean the document developed pursuant
18 to Paragraph 10 of this Consent Decree and approved by EPA, and any
19 amendments thereto.

20 "Section" shall mean a portion of this Consent Decree identified by a Roman
21 numeral.

22 "SEP" shall mean the Woodland Duck Farm Supplemental Environmental
23 Project as described in Paragraph 62, or any alternative Supplemental
24 Environmental Project approved by EPA pursuant to Paragraph 63.

25 "SEP Implementation Plan" shall mean the document describing the SEP
26 and setting forth those activities required to implement the SEP.

27 "Settling Defendants" shall mean Carrier Corporation and United
28 Technologies Corporation.

SCANNED

1 "Site" shall mean the area of groundwater contamination in Los Angeles;
 2 County, California, located in the geographic area designated on the National
 3 Priorities List as the San Gabriel Valley Superfund Site, Area 4 [see 49 Fed. Reg.
 4 19480 (1984)], and identified as the Puente Valley Operable Unit.

5 "State" shall mean the California Department of Toxic Substances Control
 6 ("DTSC").

7 "Statement of Work" or "SOW" shall mean the statement of work for
 8 implementation of the Remedial Design and Remedial Action at the Site, as set
 9 forth in Appendix D to this Consent Decree and any modifications made in
 10 accordance with this Consent Decree.

11 "Supervising Contractor" shall mean the principal contractor retained by the
 12 Settling Defendants to supervise and direct the implementation of the Work under
 13 this Consent Decree.

14 "Unilateral Administrative Order Docket No. 2001-20" or "UAO Docket
 15 No. 2001-20" shall mean the order issued by EPA to Carrier Corporation on or
 16 about September 13, 2001.

17 "United States" shall mean the United States of America.

18 "Waste Material" shall mean (1) any "hazardous substance" under Section
 19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
 20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"
 21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous
 22 material" under the California Hazardous Waste Control Act Section 25100 et seq.

23 "Work" shall mean all activities Settling Defendants are required to perform
 24 under this Consent Decree, except those required by Section XXVI (Retention of
 25 Records) and Section XVIII (Supplemental Environmental Projects).

26 V. GENERAL PROVISIONS

27 5. Objectives of the Parties. The objectives of the Parties in entering into
 28 this Consent Decree are to protect public health or welfare or the environment at

1 Decree.

2 XIV. CERTIFICATION OF COMPLETION

3 50. "Operational and Functional"

4 a. Within 30 Days after Settling Defendants conclude that the
5 Remedial Action is Operational and Functional, Settling Defendants shall schedule
6 and conduct a pre-certification inspection to be attended by Settling Defendants
7 and EPA. If, after the pre-certification inspection, the Settling Defendants still
8 believe that the Remedial Action is Operational and Functional, they shall submit a
9 written report requesting certification to EPA for approval, with a copy to the
10 State, pursuant to Section XI (EPA Approval of Plans and Other Submissions)
11 within 30 Days of the inspection. In the report, a registered professional engineer
12 and the Settling Defendants' Project Coordinator shall state that the Remedial
13 Action is Operational and Functional. The written report shall include as-built
14 drawings signed and stamped by a professional engineer. The report shall contain
15 the following statement, signed by a responsible corporate official of a Settling
16 Defendant or the Settling Defendants' Project Coordinator:

17 To the best of my knowledge, after thorough investigation, I certify
18 that the information contained in or accompanying this submission is
19 true, accurate and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

20 If, after completion of the pre-certification inspection and receipt and review of the
21 written report, EPA, after reasonable opportunity to review and comment by
22 DTSC, determines that the Remedial Action is not Operational and Functional,
23 EPA will notify Settling Defendants in writing of the activities that must be
24 undertaken by Settling Defendants pursuant to this Consent Decree in order for the
25 Remedial Action to be Operational and Functional. EPA will set forth in the notice
26 a schedule for performance of such activities consistent with the Consent Decree
27 and the SOW or require the Settling Defendants to submit a schedule to EPA for
28 approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

1 Settling Defendants shall perform all activities described in the notice in
2 accordance with the specifications and schedules established pursuant to this
3 Paragraph, subject to their right to invoke the dispute resolution procedures set
4 forth in Section XX (Dispute Resolution).

5 b. If EPA concludes, based on the initial or any subsequent report
6 requesting certification, and after a reasonable opportunity for review and
7 comment by DTSC, that the Remedial Action is Operational and Functional, EPA
8 will so certify in writing to Settling Defendants.

9 c. If EPA fails to certify that the Remedial Action is Operational
10 and Functional within 90 Days after a request, EPA shall be deemed to have denied
11 the request, unless Settling Defendants agree to an extension of time. Settling
12 Defendants may, at any time thereafter, invoke Dispute Resolution pursuant to
13 Section XX (Dispute Resolution).

14 d. Nothing herein shall preclude Settling Defendants from
15 requesting, and EPA from granting, pursuant to the same procedures set forth in
16 Subparagraphs a-c of this Paragraph, certification that a phase of the Remedial
17 Action is Operational and Functional; provided, however, that any such
18 certification shall be conditioned on such phase remaining Operational and
19 Functional at the time Settling Defendants request certification for the final phase
20 of the Remedial Action. In the event Settling Defendants request certification that
21 a phase of the Remedial Action is Operational and Functional, and such request is
22 granted, the resulting certification shall not affect the Operational and Functional
23 Date.

24 e. Upon approval of the certification report by EPA or pursuant to
25 a ruling by the Court, the Operational and Functional Date shall be the date when
26 the last report requesting certification of the final phase of the Remedial Action
27 was submitted.

28 f. The Operational and Functional Date established pursuant to

1 this Paragraph shall not be affected if existing contamination greater than or equal
2 to ten-times the levels listed in Table 2 of the SOW has migrated vertically into the
3 intermediate zone and this existing contamination prevents Settling Defendants
4 from meeting the Performance Criteria, provided the Settling Defendants are
5 taking the response actions determined by EPA to be necessary to reverse the trend
6 pursuant to the SOW.

7 g. Once EPA has determined that the Remedial Action is
8 Operational and Functional pursuant to this Paragraph, the Operational and
9 Functional Date shall not be affected in the event EPA subsequently determines,
10 pursuant to Paragraph 13, that modification to the Work specified in the SOW or in
11 work plans developed pursuant to the SOW is necessary to achieve and maintain
12 the Performance Criteria, to meet discharge ARARs, or to implement Mid-Valley
13 Monitoring.

14 51. Certification of Completion.

15 a. No later than 90 Days before, and no sooner than 120 Days
16 prior to, the eight-year anniversary of the Operational and Functional Date, and
17 upon Settling Defendants concluding that the Remedial Action is still Operational
18 and Functional, Settling Defendants shall schedule a pre-certification inspection to
19 be attended by Settling Defendants and EPA. The Settling Defendants shall submit
20 a Facility Status Package to EPA which shall include, but not be limited to, all
21 maintenance reports, performance reports, sampling results, and all other
22 deliverables updated as appropriate to reflect the performance and condition of the
23 containment and Mid-Valley Monitoring systems including all wells, pipelines,
24 and treatment facilities. If, after the pre-certification inspection, the Settling
25 Defendants still believe that the Remedial Action is Operational and Functional,
26 Settling Defendants shall submit a written report by a registered professional
27 engineer, in accordance with the SOW, stating that the Remedial Action is
28 Operational and Functional. The report shall contain the following statement,